



# Age Discrimination in Europe

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The University of Manchester  
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For additional information, please visit our website ([www.iuslaboris.com](http://www.iuslaboris.com)) or feel free to contact us.

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# Introduction

In today's global marketplace, businesses increasingly operate on a regional or international scale. Companies that coordinate their employees across multiple jurisdictions must comply with the rules and regulations governing employment, labour, pensions, and immigration law in each of those jurisdictions. As a result, retaining legal experts with knowledge and experience in both international and local Human Resources law is essential for businesses of all sizes.

Ius Laboris is an alliance of leading Human Resources law practitioners. We have more than 2,500 lawyers providing local expertise across the globe, with member firms in over 42 countries and coverage in more than 100 jurisdictions. Human Resources challenges require local expertise within a global framework. The complexities of national employment law demand it and the Ius Laboris members provide it. The Alliance focuses on specific areas of expertise within our eight International Practice Groups (IPGs). The IPGs bring together lawyers from across the Alliance with expertise in key areas of Human Resources law; including Data Privacy, Discrimination, Employee Compensation & Benefits, Global Mobility, Individual Employment Rights, OHS, Pensions and Restructuring.

In our experience, local expertise in these areas of law is crucial to developing coherent Human Resources strategies that work within a global framework. Our IPGs meet regularly and are well placed to coordinate regional and worldwide requests, drawing on each individual lawyer's wealth of experience. Clients can access the work of our IPGs, which complement our extensive portfolio of legal services.

The Discrimination IPG focuses on discrimination questions. The lawyers in this group meet regularly to study trends in types of claims, compliance methods, how claims are litigated or otherwise resolved, methods of alternative dispute resolution and other comparative issues. Each lawyer in the Discrimination IPG is dedicated to providing the best assistance to employer clients in his or her jurisdiction to avoid and resolve discrimination claims.

The Discrimination IPG has published guides on general discrimination issues, sexual harassment, sexual harassment prevention policies, and religious discrimination.

Each country has unique prohibitions regarding discrimination. Enforcement mechanisms differ widely. Accordingly, lawyers with local knowledge and expertise are essential to our clients.

A number of EU member states have only recently enacted age discrimination legislation through the implementation of Directive 2000/78/EC. Other EU member states have had age discrimination legislation in place for years but had to implement supplementary legislation to comply with the Directive. Consequently, many member states have seen an increasing number of employees claiming age discrimination and several cases have been brought before the European Court of Justice.

This guide intends to provide the basic principles on age discrimination in the 22 contributing countries to give the reader an overview of the structure of the applicable anti-age discrimination legislation. Among other things, the following questions will be discussed:

Is it possible to have a fixed retirement age in employment contracts? Are there any special rules covering employee benefits or awards that are based on seniority? What level of compensation can be claimed in age discrimination cases?

Each reference sheet of the guide deals with one country, posing the same questions to allow for comparative research. We hope that it will be a useful start in understanding the duties of employers and we welcome the suggestions of readers for future editions. The authors of each chapter are members of Ius Laboris in the country listed and full contact information is available at the beginning of the guide.

For additional information, please visit our website [www.iuslaboris.com](http://www.iuslaboris.com) or feel free to contact us.

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# A. Legislation



## AUSTRIA

The Equal Treatment Act and the Federal Equal Treatment Act came into force in 2004 (implementing various related Directives). All employees with private contracts, self-employed people with regard to access to self-employment, and civil servants of the federal government are covered. These laws cover both direct and indirect discrimination.

## BELGIUM

The Act against Discrimination of 10 May 2007 entered into force on 9 June 2007 (implementing Directive 2000/78/EC).

As regards employment relations, the main groups covered are: employees, candidates for jobs, independent workers, civil servants, partners, trainees, voluntary workers and affiliate members of supplementary social security schemes. Both direct and indirect discrimination are covered by the law.

## CZECH REPUBLIC

The prohibition against age discrimination in all employment matters was introduced into the Labour Code (currently Act No. 262/2006 Coll.) on 1 January 2001. As of 1 October 2004, the Act on Employment (Act No. 435/2004 Coll.) has prohibited age discrimination during the recruitment process. The Anti-Discrimination Act (Act No. 198/2009 Coll.), which includes a prohibition against age discrimination in a wide range of situations, came into force on 1 September 2009.

The Labour Code provides protection to employees, the Act on Employment protects job applicants, while the Anti-Discrimination Act gives protection to individuals within the scope of the situations specified in that Act, such as independent business activities, employment matters, membership of employer or employee organisations, social security and healthcare and further social protection.

The law covers direct and indirect discrimination, and harassment.

## DENMARK

The prohibition against age discrimination came into force in December 2004 through an amendment to the pre-existing Anti-Discrimination Act (Implementing Directive 2000/78/EC).

The law covers all employees, applicants for jobs, students and members of employee and employers' organisations, as well as all decisions made in regard to the right to conduct independent business activities.

All aspects of direct and indirect discrimination are covered by the law.

## FRANCE

The legal provisions relating to age discrimination came into force on 16 November, 2001 (implementing Directive 2000/78/EC). Another Law, no 2008 496, came into force on 27 May, 2008, which includes specific definitions of direct and indirect discrimination, including discrimination based on age.

The labour law covers all employees bound by a contract of employment and all areas of the employment relationship including: recruitment; disciplinary and dismissal procedures; remuneration; training; profit-sharing; reclassification; assignment; classification and promotion measures. Identical provisions protect public servants.

The Law of 27 May 2008 defines direct and indirect discrimination and covers all discrimination, including age discrimination. Direct discrimination arises when an individual is treated less favourably on grounds of age. Indirect discrimination concerns apparently neutral measures, criteria or practices which may appear unbiased but disadvantage an individual compared to others, unless these are objectively justified by a legitimate purpose and the means used to achieve it are necessary and appropriate. Harassment is also covered.

## GERMANY

The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, the 'AGG') came into force on 18 August 2006, implementing Directive 2000/78/EC.

Employees, trainees, economically dependent persons, homeworkers, job applicants and former employees are covered. The AGG also covers self-employed persons, managing directors and members of management boards, but not to the same extent. The AGG also covers civil servants. Soldiers are protected by a separate Equal Treatment Act, but not against age discrimination. Finally, the AGG covers members of trade unions and employers' associations as well as members of professional associations and important economic or social associations, if a fundamental interest in the acquisition of membership exists. The AGG covers both direct and indirect discrimination.

## GREECE

Law 3304/2005 came into force on 27 January 2005 (implementing Directive 2000/78/EC). The Law covers all types of employees in both the private and public sector. The Law covers both direct and indirect discrimination.

## IRELAND

The Employment Equality Act 1998 (the '1998 Act') came into force on 18 October 1999; the Equal Status Act 2000 (the '2000 Act') came into force on 25 October 2000; and the Equality Act 2004 (the '2004 Act') implementing Council Directive 2000/43/EC, Directive 2000/78/EC and Directive 2002/73/EC came into force in the summer of 2004.

The Acts protect all those over the age of 16 years from discrimination on the basis of age and covers employees; contract workers; office holders; partners in law and accountancy practices; members of occupational pension schemes; persons applying for vocational training; persons using employment agencies; students in further education, higher education and universities; farmers; barristers; and sole traders.

The Acts cover both direct and indirect discrimination and harassment.

## ITALY

Italy implemented EU Directive 2000/78/EC on 9 July 2003 (Law no 216). The main groups covered are: employees and contract workers in both the public and private sector. The law covers both direct and indirect discrimination, and harassment.

## LATVIA

The general prohibition on discrimination is contained in the 'Satversme', the Constitutional Law of the Republic of Latvia, which came into force on 15 February 1922. Detailed discrimination rules (including age discrimination) were introduced into the Latvian Labour law, and these became effective as of 1 June 2002. The main groups covered by these laws are employees and job applicants. The law covers both direct and indirect discrimination and harassment (although sexual harassment is covered separately).

## LUXEMBOURG

The legal provisions relating to age discrimination came into force on 28 November 2006 (implementing Directive 2000/78/EC). This Law of 28 November 2006 has introduced a new Title V 'Equality of treatment in employment and occupation' in Book 2 of the Labour Code and has modified Article 454 of the Penal Code, which prohibits any discrimination on the grounds of age.

Title V 'Equality of treatment in employment and occupation' applies to all workers (including part-time, temporary and fixed-term employees) and employers in respect of:

- access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions;
- access to vocational guidance, training and work experience;
- employment and working conditions, including dismissals and pay;
- membership of, and involvement in workers', organisations.

Direct and indirect discrimination are covered by the law, but harassment is not. However, it may fall within the definition of discrimination. Harassment is deemed to be a form of discrimination in which unwanted conduct related to age takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Article L.251-1 (3) of the Labour Code).

## NETHERLANDS

The constitution of The Netherlands (Article 1) contains a general prohibition on discrimination which forms the basis of all equal treatment legislation. The Equal Treatment in Employment (Age Discrimination) Act ('ETEA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid') came into force on 1 May 2004 (implementing Directive 2000/78/EC).

The ETEA covers all employees as well as public servants and professional practitioners. No specific group is exempted from the scope of the ETEA. Its scope encompasses: recruitment; selection and appointment of personnel; employment conditions; promotion; and dismissal.

Both direct and indirect discrimination are covered by the law, as is harassment. Indirect discrimination is discrimination on other grounds, nevertheless resulting in age discrimination. Harassment is covered by Article (2) of the Equal Treatment in Employment (Age Discrimination) Act ('EETEA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid').

## NORWAY

The first regulation regarding age discrimination came into force in 2004 (the 'Regulation') and a modification came into force on 1 January 2010. All employees are covered by the Regulation against age discrimination.

The Regulation covers both direct and indirect discrimination, and harassment.

## POLAND

General equal treatment provisions came into force on 2 June 1996. Detailed discrimination rules (including age discrimination) were introduced into the Labour Code in 2003 and became binding on 1 January 2004 (the Act of 14 November 2003 on Amendment of the Labour Code; Journal of Law No. 213, Item 2081).

Employees (including temporary workers); job applicants; and graduates undertaking work placements are covered by age discrimination law. The provisions do not apply to self-employed entrepreneurs and persons working on the basis of service contracts and other civil law contracts. The law covers both direct and indirect discrimination, and harassment.

## PORTUGAL

The Portuguese Labour Code came into force on 1 December 2003 (implementing Directive 2000/78/ EC). The main groups covered are employees and job applicants. The law covers both direct and indirect discrimination, and harassment.

## RUSSIA

The Constitution of Russia came into force on 25 December 1993 and the Russian Labour Code came into force on 1 February 2002. The regulations cover all individuals working under an employment contract. Self-employed individuals are not covered, but engaging self-employed individuals under civil law contracts may in some cases be regarded by the courts as employment in some cases. Thus, any employer engaging a self employed individual of a

prohibited age group, must ensure that the work qualifies as the provision of services, rather than employment. Employees of agencies (e.g. recruitment agencies providing outstaffing or outsourcing services) are regarded as employees of the agency and are covered by the regulations.

In Russian law there is no distinction between direct and indirect discrimination, but in theory all of the provisions should cover both direct and indirect discrimination. The laws do not cover harassment, as harassment is within the sphere of the criminal law. The provisions of the Criminal Code will apply.

## SLOVAKIA

The Anti-discrimination Act (Act No. 365/2004 Coll.) (the 'Act') came into force on 1 July 2004. In addition to the Act, the Labour Code (Act No. 311/2001 Coll.), which came into force on 1 April 2002, also prohibits age discrimination.

The Act applies to all persons with regard to: a) access to employment, including recruitment; b) performance of employment and the conditions for performing the work in employment, including remuneration, promotion and dismissal; c) access to vocational training, continuing vocational training; and d) membership and participation in organisations of employees and employers and in organisations associating persons of a certain profession including any benefits provided by the organisations to their members. The Act covers both direct and indirect discrimination, and harassment.

## SPAIN

The Spanish Constitution passed on 6 December 1978 established a general principle which forbids all forms of discrimination. Article 17 of the Workers' Statute of 24 March 1995 prohibits such discrimination in employment relationships. Directive 2000/78/EC was implemented in Spain by Law 62/2003 of 30 December.

The general prohibition against discrimination that is laid down in the Constitution extends to all Spanish nationals and foreigners in Spain. However, only employees who work under an ordinary or special employment relationship can seek the protection of the employment courts against direct or indirect discrimination, with the exception of civil servants.

The law covers both direct and indirect discrimination. Spain does not have specific protection for age based harassment and so an age harassment claim must be brought as direct age discrimination.

Victimisation is treated separately. This is where an individual is treated less favourably as a result of making allegations or complaints of direct age discrimination or acts as a witness in proceedings.

## SWEDEN

The Discrimination Act (2008:567) (the 'Act') came into force on 1 January 2009. The Act covers any person who is: (1) an employee; (2) enquiring about or applying for work; (3) applying for or carrying out a traineeship; or (4) is available to perform work or is performing work as temporary or borrowed labour. The law covers both direct and indirect discrimination, and harassment.

## SWITZERLAND

There is no specific age discrimination law in Switzerland. However, certain provisions of the Swiss Code of Obligations provide protection to employees in the area of age and any other form of discrimination. The Swiss Code of Obligations applies to all employment relationships in the private sector.

While the Swiss Code of Obligations does not particularly address age discrimination, protection from discriminatory measures includes both direct and indirect discrimination. As to harassment, this is not specifically covered, but the general protection against discrimination may apply in the event of harassment.

## TURKEY

There is no Turkish law directly regulating age discrimination. It is indirectly regulated under Article 5 of the Labour Law (the 'Law') no 4857 of 10 June 2003 (also known as the 'equal treatment obligation'). Article 5 bans discrimination on grounds of gender, religion and other grounds of 'similar' status. The courts have determined that 'age' falls under similar status. Article 5 of the Law applies to all employees. Employees are defined as natural persons employed under employment agreements for definite or indefinite periods.

The labour courts will hear claims for both direct and indirect discrimination. While harassment is indirectly covered under Article 5 of the Law, Articles 24 and 25 directly regulate harassment as a 'justified' reason for termination by both employer and employee. Thus, if the employer harasses the employee, the employee can terminate on justified grounds. If the employee harasses another employee or the employer or his or her family, the employer can terminate on justified grounds.

## UNITED KINGDOM

The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006 (implementing Directive 2000/78/EC). The main laws are now contained in the Equality Act 2010 from 1 October 2010. The main groups covered are: employees; contract workers; office-holders; partners; members of occupational pension schemes; persons applying for vocational training; persons using employment agencies; and students in further education, higher education and universities. The law covers both direct and indirect discrimination, and harassment.

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## B. Justifying age discrimination



## AUSTRIA

Age discrimination can be objectively justified by a legitimate aim if the means of achieving that aim are appropriate and necessary. There is no limitation to defined aims.

## BELGIUM

Direct age discrimination can be objectively and reasonably justified by a legitimate aim, including legitimate objectives of employment policy, labour market or any other comparable legitimate objectives, where the means used to achieve that aim are appropriate and necessary. The aims are not further defined.

Indirect age discrimination is justified if the difference in treatment is objectively and reasonably justified by a legitimate aim and the means to achieve that aim are appropriate and necessary.

## CZECH REPUBLIC

In terms of justifying direct or indirect discrimination, it should be noted that during the recruitment process, different treatment justified by the following is not regarded as age discrimination:

- requiring a minimum age, professional experience or length of employment provided those are necessary for the proper performance of the work or for access to rights and obligations connected with the employment;
- a requirement to obtain professional qualifications which would take a disproportionately long time to gain relative to the job applicant's retirement age.

Further, different treatment by reason of age does not constitute age discrimination where there is an objective reason for it connected with the nature of the work and where the requirements made by the employer appropriately reflect this.

## DENMARK

Direct age discrimination is only justified in a few situations set out explicitly in the law.

An employer can justify age discrimination if it can prove the treatment is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

## FRANCE

Difference of treatment based on the age of the individual may not now be considered discrimination if it is objectively and reasonably justified by a legitimate aim and if the means used to achieve that aim are necessary and in proportionate (Articles L. 1133-1 and L. 1133-2 of the Labour Code).

## GERMANY

Age discrimination is lawful if justified by a legitimate aim where the means of achieving that aim are appropriate and necessary. The law contains some examples of this. One of those permits agreements terminating employment contracts once employees can apply for a pension; another allow a Social Plan to include a severance payment staggered according to age/seniority and that employees can be excluded from certain benefits if they qualify for a pension.

## GREECE

Articles 5, 9 and 11 of Law 3304/2005 state that 'different treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate'.

Indirect discrimination will be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons.

## IRELAND

An employer can justify direct age discrimination on the basis that it has a legitimate aim and the means of achieving that aim are appropriate and necessary. The same test is used for justifying indirect age discrimination.

## ITALY

An employer can justify direct age discrimination if it can show that the treatment is a 'proportionate means of achieving a legitimate aim'. The law provides some specific aims that could justify age discrimination, for example: a special condition to access the job market; a minimum age limit to access the job market; and a maximum age limit for training contracts.

## LATVIA

There is no specific justification laid down in the Labour law for age discrimination. The employer can justify direct age discrimination if it can show that the treatment is 'objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'. This is not limited to any defined aims.

## LUXEMBOURG

According to Article L. 252-1 (1) of the Labour Code, notwithstanding the principle of equal treatment, a difference of treatment based on age will not constitute discrimination where, by reason of the nature of the occupational activities concerned or of the context in which they are carried out, the characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

## NETHERLANDS

Article 1 of the Equal Treatment in Employment (Age Discrimination) Act ('ETEA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid') does not distinguish between direct and indirect age discrimination. An employer can justify (in)direct age discrimination if it has a legitimate aim; the means used to achieve that aim are efficient, necessary and proportionate; and the aim cannot be achieved by an alternative, non-discriminatory measure.

## NORWAY

Any measure that is necessary in order to achieve a just cause, and that does not involve disproportionate intervention in relation to the person or persons so treated, is justified age discrimination. This exception is to be understood in accordance with Council Directive 2000/78/EC. The statute itself contains no explicitly defined aims.

## POLAND

The employer can justify age discrimination by showing that its behaviour is objectively justified by a legitimate aim and that the measures used to achieve that aim are appropriate and necessary.

## PORTUGAL

With regard to employment, a difference in treatment (including direct age discrimination) can be objectively and reasonably justified if a characteristic constitutes an essential and determining professional requirement due to the nature of the professional activity or the context in which it is performed, provided that objective is legitimate and the requirement is proportionate to the objective. This is not limited to any defined aims.

## RUSSIA

The Labour Code and other federal laws establish certain age-based variations in employment conditions, limitations, preferences, etc based on the job requirements in the workplace. Applying these is not considered to be discrimination. For example, the retirement age for certain jobs in the aviation sector is 55 for men and 50 for women. Note that in Russian law there is no distinction between direct and indirect discrimination.

## SLOVAKIA

Discrimination does not occur if the employer can demonstrate that the difference in treatment is objectively justified by a legitimate aim and that the means of achieving that aim are appropriate and necessary. There are no aims defined by law in this regard.

## SPAIN

The Spanish Constitutional Court has confirmed the burden of proof will be reversed in cases of discrimination. Provided the applicant brings evidence indicating that discrimination has occurred, the burden rests on the employer to demonstrate the existence of objective and reasonable grounds, unrelated to any discriminatory intent. Prior to presenting evidence, the employer must prove that the grounds for the decision were reasonable and necessary from a business perspective (Spanish Constitutional Court 135/1990).

## SWEDEN

An employer can justify age discrimination if it can show that the treatment 'has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose'.

## SWITZERLAND

There is no particular duty to treat employees equally in Switzerland. An employee can only claim, under special circumstances, that his or her personality rights have been violated. Moreover, an employer can justify termination of the employment if age is relevant to the particular task to be performed. In such cases, termination is not deemed to be abusive. The same applies if the termination is because the employee has reached retirement age.

## TURKEY

The Courts have ruled that differing treatment may be justified by 'objective reasons' (e.g. a 30 year old may be chosen over a 50 year old if the work requires physical strength).

## UNITED KINGDOM

An employer can justify direct or indirect age discrimination if it can show that the treatment is a 'proportionate means of achieving a legitimate aim'. This is not limited to any defined aims.

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## C. Retirement age



## AUSTRIA

The statutory retirement age is 65 for men and 60 for women at present. Generally, dismissing an employee at this age will not be discriminatory, unless there are other circumstances indicating discrimination. There is no special procedure for retiring an employee, and, broadly, a dismissal is possible under the normal rules, but usually the employment is terminated by mutual agreement when the employee retires.

A challenge to the dismissal by an employee who has already reached retirement age has little prospect of success as the law allows for reductions in salary in connection with dismissals, especially in cases of retirement (i.e. a reduction in income of, for example, 20%, will not lead to the dismissal being assessed as unfair on social grounds). In Austria there are many benefits based on seniority (e.g. severance payments upon termination of employment). Therefore, contractual or voluntary benefits based on seniority are not regarded as discriminatory.

## BELGIUM

No fixed retirement age is used in Belgium. The legal pensionable age is 65 years but employees can opt for early retirement from the age of 60. The Act on Employment Contracts prohibits mandatory retirement. The law does, however, provide for shorter notice periods to dismiss an employee of 65 years or more.

When an employee reaches the legal pensionable age of 65 the notice periods necessary to dismiss the employee are shorter. If an employee is dismissed at 60 and has worked for 30 years, he or she is entitled to a bridging pension, i.e. a supplementary indemnity from the last employer, on top of unemployment benefits until the legal pensionable age of 65. The age of 60 years can be lowered in specific circumstances.

In Belgium many remuneration or benefit systems are based on seniority. There are, however, no specific rules governing these systems. The main discrimination principles therefore apply. Only if these systems do not result in indirect age discrimination will they be permitted.

## CZECH REPUBLIC

There is generally no fixed retirement age. Employers can only terminate employment for the reasons specified by the Labour Code and reaching retirement age is not one of them. However, some employees (mostly in the public sector) are required to retire at a certain age in accordance with particular laws. For example, judges and public prosecutors must retire at 70 and professional soldiers must retire upon reaching the statutory retirement age.

There are no special rules employers have to follow when retiring an employee, because employees cannot be dismissed as a result of reaching the retirement age. Employees who reach the statutory retirement age must be treated in the same way as other employees. This includes the application of the rules for dismissal.

## DENMARK

Individual contracts or collective agreements may set out a mandatory retirement age of 70 years or older. Provisions on retirement ages lower than 70 years in collective bargaining agreements already in force when the prohibition against age discrimination was implemented may be maintained provided that they are objectively and reasonably justified by a legitimate aim, and that the means of achieving that aim are appropriate and necessary.

There are no special rules employers have to follow when retiring an employee, which are different from the rules for other dismissals.

Benefits or awards provided on the basis of length of service are generally considered acceptable. However, employers must be prepared that seniority based benefits and awards could be challenged as indirect discrimination.

## FRANCE

At present, an employer can propose that an employee retire at 65 (as under French social security law full state retirement benefits are available from that age). However, a reform concerning retirement is currently being debated. This would progressively increase retirement, as initiated by the employer, to 67 (other than in specific circumstances

i.e. having interrupted a career to raise children or having raised at least three children after a minimum period).

Moreover, an employer may only impose retirement (without the employee's consent) at 70.

An employer must follow a set procedure to retire an employee (although this procedure is not as stringent as the dismissal procedure). When an employee reaches 65 (or 67 if the new law is passed), an employer can propose, in writing, three months before his or her birthday each year that he or she retire. The employee can refuse to retire until 70. An employer does not have to justify a decision to retire an employee.

In terms of employee benefits or awards based on seniority, there is a principle of equal pay which must be applied to employees in equal situations. A breach of this principle can be justified if it results from objective and relevant reasons which can be materially checked.

## GERMANY

The current legal retirement age is 65 (until 2029, when it will be raised to 67). The employment contract expires if it is limited in advance to the legal retirement age. The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, the 'AGG') expressly provides that an agreement terminating the employment contract as soon as the employee can apply for old-age pension can be justified.

Formerly (i.e. before the AGG) a clause that terminates the contract at an age which is lower than the legal retirement age was accepted in exceptional cases (e.g. pilots). However, this might change under the AGG (see ECJ, C-447/09, Prigge).

If the employer provided an occupational pension scheme, it must inform the employee of the amount of his monthly pension.

According to the AGG, provisions based on seniority can be justified by a legitimate aim where the means of achieving that aim are appropriate and necessary. Benefits or awards based on seniority can be justified as seniority is assumed to be connected with work experience, which can increase efficiency.

## GREECE

According to the recently passed pension scheme, Law 3863/2010, pension will be granted after a certain age-limit which will be 65 years by 2015, irrespective of gender. As a precondition to receiving the pension, the employee will be required to have completed a certain period of employment. Over time this will reach 40 years.

According to Law 3198/55, in the case of a full retirement pension award, the employee is entitled to a) 40% of the relevant severance payment, as provided by Law 2112/1920, if he or she has supplementary insurance or b) in all other cases, 50% of the relevant severance payment. In the case of a dismissal, the employee is entitled to a full severance payment in accordance with the provisions of Law 2112/1920.

Senior employees are entitled to longer annual and sick leave. As far as compensation for redundancy is concerned, it is affected by the length of service for the employer.

## IRELAND

There is no mandatory retirement age under Irish law. However, many employers specify a mandatory retirement age in the employment contract. It is not discrimination to fix different retirement ages for different employees or groups of employees, provided no discrimination on the grounds of gender occurs as a result. There are no special rules employers have to follow when retiring an employee, which are different from the rules for other dismissals.

The law provides that age discrimination is permitted in respect of occupational benefit schemes providing benefits to cover illness, incapacity or redundancy. The Pensions Act 1990 outlaws discrimination on nine grounds in respect of pension scheme rules including indirect discrimination, unless objectively justified. These grounds include age. However, the Act permits differing treatment on the 'age ground' in relation to access to scheme membership and the level of contributions or benefits.

## ITALY

The retirement age is 65. At 65, an employer can freely dismiss an employee without giving any reason. There are no special rules that need to be followed when retiring an employee. The employer should write an ordinary dismissal letter with notice - the dismissal cannot be on the grounds of the employee's age.

Some collective agreements provide for specific increases linked to length of service with the same employer and longer notice periods according to length of service.

## LATVIA

The general retirement age is 62, but reaching a particular age cannot be used as grounds for termination of employment. There are no special rules employers have to follow when retiring an employee, which are different from the rules for other dismissals.

In the case of reduction in the number of employees, if employees have similar qualifications and work results, the preference to continue employment relations is for persons who have less than five years to go until their retirement date. Severance pay must be based on length of service with the employer (the longer the length of service, the greater the compensation).

## LUXEMBOURG

The retirement age is 65. At 65, if the employee is entitled to a retirement pension, the employment contract will automatically end (note that employees may retire before 65 if they have accumulated enough months of compulsory contributions). Nevertheless, after retirement age, the employee may continue to work, but a new employment contract must be made, as the old one automatically ends on the employee's 65th birthday if he or she is entitled to a pension. In fact, employees may work at any age, even with an early retirement or old-age pension. The law nonetheless provides for specific thresholds of remuneration in order to avoid accumulation of both a full retirement pension and significant remuneration.

The employer is not entitled to force an employee to retire before the statutory retirement age. Nor can employers dismiss employees because of their age, either before or after the employee has reached 65. The contract will end automatically without any intervention from the employer.

Note that the length of the notice period and the amount of any indemnity allowance will increase according to length of service. In addition, some collective bargaining agreements provide special benefits linked to seniority. Further, social plans often provide additional higher departure allowances for the benefit of older employees. Generally, employers may grant some benefits based on seniority if they can be justified by a legitimate objective and a genuine and proportionate requirement.

## NETHERLANDS

In The Netherlands people become entitled to a state pension at 65. Recently the courts have decided that an employment contract for an indefinite period of time does not terminate by operation of law for the sole reason that the employee has reached the age of 65, unless the facts/circumstances show that the parties intended to terminate the employment agreement at that time. Employment agreements and/or CBAs that stipulate in writing that the agreement terminates when pensionable age is reached are still common (and valid). The government plans to raise the pensionable age to 66 by 2020; and to 67 by 2025.

If the employment contract (or applicable CBA) does not provide that it will expire when the employee reaches 65, it is generally considered not to terminate by operation of law and the employer must apply for a dismissal permit from the Labour Authority or file a petition at the Cantonal Court requesting it to dissolve the agreement. The fact that an employee reaches 65 will, in principle, be considered a valid termination ground, without it being discriminatory as explicitly stipulated in Article 7(1)(b) of Article 1 of the Equal Treatment in Employment (Age Discrimination) Act ('ETEA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid').

Awards or benefits based on seniority can be objectively justified, provided they are legitimate, efficient and

proportionate. It is, for instance, permitted to reward certain employees for having more relevant experience, if it can be justified that the seniority in years of service has resulted in a more qualified and skilled employee. In addition, 'years of experience' conditions in job adverts are exempt from the age discrimination laws.

## NORWAY

The Working Environment Act is based on the assumption that an employment contract may be terminated at the age of 70. A lower age limit may be permissible under other legal provisions when that age limit achieves a just aim and does not involve disproportionate intervention in relation to the test for justifying age discrimination.

The employee is entitled to written notification of the time of retirement. Retirement may be demanded no earlier than 6 months after the first day of the month after such notification reaches the employee.

Before such notification the employer must, to the extent possible, have a conversation with the employee, unless the employee does not wish to have such a conversation. An employee who wishes to retire must give a corresponding notification period of one month. The notification does not have to be in writing.

An employee has a right to additional holidays (one week) from the age of 60 and the holiday allowance also increases from the age of 60 to compensate for loss of income during holidays.

## POLAND

Polish law determines a fixed retirement age of 65 (for men) and 60 (for women). In addition, there are certain groups of employees who are entitled to earlier retirement (e.g. teachers, police officers and miners).

According to recent rulings of the Supreme Court, the termination of an employment contract cannot be justified solely by reason of the fact that the employee has reached retirement age and become entitled to a pension. During the four years before an employee reaches retirement age, an employer cannot terminate his or her employment agreement unless extraordinary circumstances occur (e.g. disciplinary matters or the liquidation of the employer).

There are some laws which use seniority as a criterion when determining awards and benefits for employees. The amount of severance pay due to redundant employees depends on seniority and rules which make certain benefits conditional on seniority also exist in the Civil Service. With respect to private companies, such rules can be used in internal regulations (collective bargaining agreements or remuneration regulations) and employment agreements.

## PORTUGAL

The general retirement age is 65, but an employee cannot be forced to retire at 65. If an employee continues to work after the employer and the employee have become aware that he has reached 65, or if an employee reaches 70 years (without having requested retirement), the employment contract is automatically converted into a six month fixed term contract, renewable for successive periods of six months. However, either the employer or the employee may terminate by notice in writing of a minimum of 60 or 15 days, respectively. If the employee has reached retirement age or 70 years of age, the employee is no longer entitled to any severance pay on termination.

In cases where, having reached 70 years old, the employee remains in his or her job, the employer must follow the legal provisions regarding termination of employment, notably by giving 60 days' notice of termination.

Collective bargaining agreements may make special payments based on seniority. In addition, compensation may vary according to the employee's seniority (e.g. in cases of compensation for unfair dismissal, collective dismissal, or redundancy). For example, employees being made redundant are entitled to a severance payment equal to one month's basic salary plus a seniority allowance ('diuturnidade') for each full year of service.

## RUSSIA

The general retirement age in Russia is 60 for men and 55 for women. For certain jobs (e.g. those involving harmful environments) the retirement age can be 5-10 years less. Reaching the state retirement age entitles a person to a state pension, but generally does not lead to an obligation to quit the job and employers cannot request termination

on these grounds. The individual may continue working, and also receive a state pension. However, civil servants and rectors of state higher educational institutions, for example, are exceptions. Note that in five to ten years' time the Russian government may increase the retirement age, but the exact retirement age has not yet been determined.

Generally, the employer is not entitled to force an employee to retire upon reaching a certain age or move to another position unless for jobs in harmful environments. The dismissal of an employee of retirement age must be made on the same grounds and in accordance with the same procedures as other employees.

However, when hiring a new employee of retirement age the employer may suggest signing a fixed-term employment contract and safely dismiss the employee once the contract expires subject to notice, made not later than three days before the contract expires.

There are no rules in Russia providing for any employee benefits or awards based on seniority. Benefits and awards may be based for example, on work experience, but not on age. Employers may, however, establish certain benefits based on length of service.

## SLOVAKIA

There is no fixed retirement age, and so general grounds for termination apply (and none of these relate to the age of an employee).

However, there are some categories of state employees who are excluded from legal protection against age discrimination. The following retirement ages apply to them:

- members of the armed forces (55);
- customs officers (55);
- police (55);
- judges (65);
- public prosecutors (65);
- university teachers (65);
- state service employees (65); and
- fire and rescue brigade members (no exact age is specified, but their state-employment terminates when they reach the age entitling them to draw pension benefits).

There are no special rules which may be applied when dismissing an employee who has reached the retirement age. In such cases the general rules on dismissals must be followed.

Generally, there are no rules allowing for employee benefits or awards based on seniority. However, special laws regulate the remuneration of state service or public-service employees depending on their length of service.

## SPAIN

Law 14/2005 of 1 July has re-opened the door to the negotiation of compulsory retirement in collective agreements in Spain. From 2 July 2005, collective agreements may agree compulsory retirement for employees, provided that:

- i. the measure is connected to coherent objectives with respect to the employment policy of the collective agreement; and
- ii. the employee has covered the minimum contribution period and meets the other requirements specified by Social Security legislation for entitlement to a contributory retirement pension.

Compulsory retirement clauses will not be discriminatory if they are 'objectively and reasonably justified' by a 'legitimate employment policy, labour market and vocational training objectives', as set out in Article 6 of Directive 2000/78/EC. Some collective bargaining agreements oblige employers to pay employees an additional amount based on seniority.

## SWEDEN

In accordance with the Swedish Employment Protection Act (1982:80), an employer may terminate an employment

contract at the end of the month in which the employee reaches the age of 67. The retirement age does not need to be in the contract and retiring an employee according to this procedure will not amount to age discrimination. Should the employer choose to keep the employee after the age of 67, it must then show just cause for terminating the employment.

When retiring an employee, the employer must give the employee written notice at least one month in advance. However, in practice, the employer and employee normally plan the retirement together at an earlier stage.

The prohibition on age discrimination does not prevent an employer from using age limitations regarding its employees' rights to a pension or survivor or invalidity benefits in individual contracts or collective bargaining agreements.

## SWITZERLAND

Currently, the ordinary retirement age is 65 for men and 64 for women. In principle, the employment relationship is still in force when the employee has reached the ordinary retirement age. Consequently, the employer or the employee should terminate the contract within the notice period agreed in the contract, if the parties have not made specific provisions about this in the contract. There are no special rules employers have to follow when retiring an employee, which are different from the rules for other dismissals.

There are no particular statutory benefits or awards that are based on seniority. However, it is standard practice in employment contracts, that salary and the number of days of holiday, for example, are based on seniority.

## TURKEY

There is a fixed retirement age, but retirement cannot be the sole reason for dismissal. Until 2036, the retirement ages for male and female employees will be 60 and 58 respectively. From 2036 onwards, the government plans to increase the retirement ages gradually, reaching 65 for both genders in 2048. Currently, both genders should also have paid an amount of premium equal to 7,000 work days in order to be able to earn the right to retire with pension. When retiring an employee, the retirement cannot be the sole reason for termination of the employment agreement: other reasons such as the behaviour or productivity of an employee should also be involved.

In this respect, reaching retirement age is regarded as only a supplementary reason for termination. If an employer terminates an employment agreement based solely on the employee reaching retirement age, the termination will be deemed wrongful termination.

Certain benefits related to seniority are: (1) an increase in the number of days of annual paid leave; (2) an increase in the number of days' notice applicable in cases of termination with a valid reason; (3) an increase in the amount of damages awarded by the Court in re-employment cases; (4) premiums paid based on seniority and performance in certain workplaces (not regulated under the Law).

## UNITED KINGDOM

Currently the law allows employers to rely on a default retirement age of 65. This does not need to be in the contract of employment. Retiring employees at 65 or older will not be age discrimination, provided the correct procedure is followed. If retirement is before 65, the employer must justify this to avoid a direct age discrimination claim. However, the default retirement age of 65 will be abolished from October 2011, after which an employer wishing to use any retirement age will need to justify it to avoid age discrimination.

A special procedure applies to retirement dismissals, which must be followed to avoid claims for age discrimination and unfair dismissal. The employer must notify the employee of the intended retirement date at least six months in advance, and the employee has a right to request to continue working. The employer must hold a meeting to consider the request before retiring the employee. These rules apply to notifications before April 2011, for retirements effective before October 2011. The procedural position from October 2011 is not yet known.

The provision of benefits based on years of service of up to five years is exempt from the prohibition against age discrimination. For benefits based on seniority over five years, the employer must reasonably believe that using length of service fulfills a business need.



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## D. Exceptions



## AUSTRIA

Note that wage schedules in collective bargaining agreements that provide for income increases for employees with more years of service, as well as more favourable statutory terms for senior employees with regard to notice periods, parental part-time working, holiday entitlements, etc, are not considered to be discriminatory.

## BELGIUM

The Act against discrimination introduced two general grounds of justification: (1) a direct or indirect difference in treatment is not discriminatory if it concerns a measure of positive action to be determined by Royal Decree; (2) or if the difference in treatment is imposed by law. Further, direct age discrimination can be justified on 'essential and determining occupational requirements', based on the nature of the occupational activity or the context in which it is performed, provided that the objective is legitimate and the requirement is proportionate to that objective.

## CZECH REPUBLIC

Some special treatment is guaranteed to employees who are minors. These employees cannot perform work:

- which is not appropriate to their physical and mental development;
- where they are exposed to an increased danger of accident or where they could seriously endanger the health and safety of others;
- underground in mining for minerals or in making tunnels;
- at night.

There are also special rules on working hours for minors.

In the case of termination of employment for organisational reasons, the amount of mandatory severance pay differs according to seniority. For:

- less than one year of employment – one average month's salary;
- over a year, but less than 2 – two average months' salary;
- more than two years – three average months' salary.

There are no other special rules based on seniority.

## DENMARK

The prohibition against age discrimination does not apply to employees under 15 unless the employment is covered by a collective agreement. Similarly, the prohibition does not apply if an employee under 18 is covered by a collective agreement permitting lower salaries to those under 18.

Further, employers are permitted to implement special measures to promote job opportunities for seniors or, in order to protect children and young people, lower age limits on employment may be laid down by law. Finally, employers may apply for a specific exemption if it is crucial in a given profession for an employee to be a particular age.

## FRANCE

French law allows exceptions to age discrimination in two situations: (1) to protect senior and young employees with special working conditions by prohibiting particularly dangerous work; and (2) to increase the level of employment of senior employees using specific measures. These include provisions designed to: secure a senior employee's career path; facilitate his or her redeployment; manage the end of his or her career; and decrease discrimination risks related to his or her recruitment or dismissal.

## GERMANY

Age discrimination is lawful if justified by a legitimate aim where the means of achieving that aim are appropriate and necessary. There are no other specific exceptions to age discrimination.

## GREECE

The main exemptions to age discrimination, under Article 11 of Law 3304/2005, (employment support especially for young and old), are the fixing of: a) minimum conditions of age, professional experience or seniority for access to, or for certain advantages linked to, employment, (e.g. for judges, notaries and certain public servants); b) a maximum age for recruitment based on the training requirements of the job or the need for a reasonable period of employment before retirement (e.g. for armed forces' security organisations and firemen); and c) ages for occupational social security schemes and admission or entitlement to retirement or invalidity benefits, provided there is no discrimination on grounds of sex.

## IRELAND

Section 37(3) of the Employment Equality Act 1998 (the '1998 Act') Act permits an employer to set age conditions where the age requirement constitutes an occupational qualification for the post. Employers must ensure the characteristic constitutes a genuine and determining occupational requirement with a legitimate objective and proportionate requirement.

Employers must not discriminate on the grounds of age in setting a maximum age of retirement which takes account of: (a) time spent training an employee; and (b) the need for a reasonable time prior to retirement for the employee to do the job. Accordingly, an employer could decide not to train an older worker because the expected returns would be inadequate.

## ITALY

The main exceptions to age discrimination are: (1) specific requirements to facilitate access to the job market; (2) a maximum age for special types of training contracts; (3) redundancy payments based on years of service or multipliers for age bands provided by collective agreements for executives. However, all measures must be reasonably justified by legitimate aims.

## LATVIA

Some professions (governed by separate laws), require certain physical capabilities in order to do the job. These professions include policemen, firemen, seamen and professional dancers. In most cases the age limit for these is below the general retirement age and if it is reached, this may result in termination of the employment relationship.

## LUXEMBOURG

Some exceptions currently provided for by Luxembourg law to age discrimination are that: periodical medical examinations are compulsory for workers under 21; young employees under 18 are more protected, notably, with regard to the number of hours of work to be performed and night work; certain outplacement measures are proposed for workers over 30; only workers aged at least 57 may benefit from early retirement. Supplementary pension schemes may also provide for differences in treatment on grounds of age, if the differences are objectively and reasonably justified (Article L. 252-2 of the Labour Code).

## NETHERLANDS

An employer will not be held to have discriminated against in the situations described in Article 1 of the Equal Treatment in Employment (Age Discrimination) Act ('ETEA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid'). For example, if the distinction is based on employability or labour market policy and designed to stimulate the participation of certain age groups in the labour force. Other exceptions include: (1) where it is necessary due to substantial business interests, such as the continuity of a company; (2) the job is age-specific, such as jobs in the fashion industry; (3) if the nature or objective of education so requires; (4) in cases of 'functional age dismissals' e.g. firemen and pilots, who retire at an earlier age on public policy grounds.

## NORWAY

Any measure that is necessary in order to achieve a just cause, and that does not involve disproportionate intervention in relation to the person or persons so treated, is justified age discrimination. There are no other exceptions.

## POLAND

There is an exhaustive catalogue of situations in which an employer is allowed to differentiate and which are not treated as either direct or indirect discrimination provided that the actions are proportionate to employer's legitimate aims: e.g. (1) the use of seniority to determine terms and conditions of employment; (2) to make selections for redundancy; (3) where a job applicant is rejected due to his or her age, where the type of work or conditions of performance cause age to be a real and decisive professional requirement; and (3) where measures aimed at decreasing inequality are used for a defined period of time to the advantage of disabled employees.

## PORTUGAL

There are no specific exceptions to age discrimination set out in law.

## RUSSIA

Generally, employment can start once the individual is 16 (with exceptions for e.g. children of any age who perform in theatres or circuses). Specific rules apply to employees under 18 and again, certain jobs are prohibited to this age group, e.g. work in hazardous conditions, and work that might impair health or moral development (e.g. work in casinos or night clubs). All employees under 18 must have a medical examination every year and are given additional guarantees, including, longer holidays and fewer grounds for dismissal.

The law sets out a list of jobs prohibited to individuals who have reached retirement age (mainly civil servants and soldiers).

## SLOVAKIA

According to the Anti-discrimination Act (Act No. 365/2004 Coll.) (the 'Act'), differences of treatment on grounds of age do not constitute discrimination if they consist in: a) the fixing of a minimum or maximum age as a recruitment criterion; b) the setting of special conditions for access to employment and vocational training, and special conditions of employment, including remuneration and dismissal, for persons of a certain age bracket or persons with caring responsibilities, where such special conditions are intended to promote vocational integration or ensure the protection of such persons; c) the fixing of a minimum age, professional experience, or seniority in service requirements for access to employment or for certain advantages linked to employment.

## SPAIN

Children under 16 are prohibited from working. In addition, the formalisation of certain forms of employment contract such as training contract or contracts for the encouragement of employment may depend on working time limits if the employees are under 18 years. Finally, there are some references in law to age in the process of election of employee representatives.

## SWEDEN

Minimum wages related to age by means of collective bargaining agreements are treated as exceptions to the age discrimination rules.

## SWITZERLAND

An employer should not terminate an employment contract with an employee because of his age if this element is not connected to his or her position/work or if it does not significantly affect his or her work. The employee may allege that the termination is abusive and claim compensation.

## TURKEY

The main exceptions to age discrimination law are: (1) employees under the age of 18 and over the age of 50 must be granted a minimum of 20 days of annual paid leave regardless of their seniority; (2) certain regulations exist for employment of children under the age of 18 in a variety of jobs (e.g. dangerous jobs and night-time jobs); (3) women are granted a younger age for retirement (men reach retirement at 60, while women do so at 58).

## UNITED KINGDOM

The main exceptions to age discrimination (other than justifying the treatment as a proportionate means of achieving a legitimate aim) are: (1) where the employer has a 'genuine occupational requirement' for a characteristic related to age, and this is both determining and proportionate; (2) provision of facilities for training or encouragement to do particular work, where it reasonably appears that this prevents or compensates for disadvantages linked to age; (3) statutory or enhanced redundancy payments based on years of service or multipliers for age bands 18-21, 22-40 and 41-65; (4) different national minimum wage rates for those aged 22 or over, 18 to 21, and under 18; (5) provision of life assurance cover to those over 65.

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## E. Redress



## AUSTRIA

Most claims with regard to age discrimination are brought before the Labour and Social Court. It is, however, also possible to appeal to the Equal Treatment Commission, which has the power to make non-binding proposals in relation to discrimination cases but not to award damages.

Compensation can be awarded for: (1) financial loss (e.g. loss of earnings – in some cases a lump sum will be awarded in compensation); and (2) 'injury to feelings' (minimum EUR 720).

## BELGIUM

Any discrimination claim related to employment matters can be brought before the Labour courts and tribunals.

Compensation can be awarded for both material and moral damages. In principle the victim would have to prove the existence and the amount of his or her loss. The victim can also choose to claim a fixed lump sum for damages amounting to three or six months of remuneration (depending on whether it can be proved that the less favourable treatment would also have occurred based on non-discriminatory grounds, unless it can be shown that the less favourable treatment would have occurred irrespective of the discrimination).

Contractual provisions which are contrary to the principle of equal treatment are void and any person discriminated against has the right to claim an injunction by the president of the Labour Court to immediately cease all discriminatory actions against him or her, possibly with a penalty for non-compliance and mandatory publishing of the judgment. Certain infringements constitute criminal offences and are subject to imprisonment and/or criminal fines.

Note that an employee claiming discrimination against an employer enjoys dismissal protection for 12 months or, if legal action is taken, up to three months following the court's final judgment. If the employer does dismiss the employee, it must demonstrate the dismissal was unlinked to the claim. For unfair dismissal, the employee may be reinstated, paid six months' pay or compensated for proven damage.

## CZECH REPUBLIC

Employees who have been discriminated against can enforce their rights in the courts. They can also file a claim about discrimination to the Labour Inspection Office, which can impose a fine on the employer.

Employees can apply to the court for an order:

- that the discrimination is ceased;
- that the consequences are rectified;
- appropriate compensation for material loss.

If the employee's dignity or reputation in the workplace is substantially harmed and the above measures are insufficient, the employee may claim financial compensation for non-material harm.

There is no set limit for compensation in Czech law and so the amount awarded will be at the discretion of the court.

Employers that unlawfully discriminate against job applicants can be fined up to CZK 1,000,000 (EUR 40,000) by the Labour Inspection Office. Employers that discriminate against their employees can be fined up to CZK 400,000 (EUR 16,000).

## DENMARK

Individuals may bring a claim before the Danish courts or file a complaint with the Danish Board of Equal Treatment.

Employees suffering age discrimination at work are entitled to compensation. The Danish Anti-Discrimination Act does not put a cap on the amount of compensation which may be awarded. The employee is not required to demonstrate any financial loss in order to be awarded compensation.

The courts may order an employer to pay a fine if the employer disregards the prohibition against age discrimination by stating in a job advertisement that applicants of a particular age will be preferred.

## FRANCE

Employment-related age discrimination claims can be brought in labour tribunals. Moreover, any discrimination issue can be laid before the dedicated independent administrative body, the High Authority for Anti-Discrimination Measures and Equality (the 'HALDE').

Compensation can be awarded: (1) where a discriminatory dismissal is declared void (according to Article L. 1132-4 of the Labour Code an employee who refuses to be reinstated is eligible for damages calculated according length of service in the organisation and the severance pay provided for by law or under any applicable collective bargaining agreement or employment contract); (2) for moral injury independent of financial loss.

Discrimination committed by a person is punishable by three years' imprisonment and a fine of EUR 45,000 (Article 252-2 of the Criminal code). Discrimination committed by a legal entity is punishable by a fine of EUR 225,000. Additional sanctions include the dissolution of the legal entity; publication of the judgment; and a ban on the exercise of a specified professional activity (Article 225 - 4 of the Criminal Code).

## GERMANY

In cases regarding discrimination against employees or job applicants, individuals can enforce their rights in the Labour Courts. Other individuals (e.g. board members) must enforce their rights in the Civil Courts.

Compensation can be claimed for financial loss (if the employer acted negligently or with intent) or for pain and suffering (with no such requirement). The compensation must be proportionate and act as deterrent. However, compensation is limited: if discrimination occurred during a job application, the applicant can claim the salary he would have received until the earliest termination date. Immaterial damages are limited to three months' salary if the applicant would not have been hired even if there had been no discrimination.

If someone is excluded from membership of a trade union or employer's association or discriminated against on grounds of age, that person can claim membership or participation in the association.

An applicant must claim compensation within a period of two months of his or her knowledge of the alleged discrimination (see ECJ, C-246/09, Bulicke). A clause terminating the employment contract as soon as the employee can apply for pension can be part of a collective bargaining agreement which can be declared to be of general application (see ECJ, C-45/09, Rosenblatt).

## GREECE

Work Inspectorates generally monitor compliance with the obligations arising from legislation in labour relations. An employee may also enforce his or her rights before the ordinary courts.

For age discrimination during recruitment, the employer may be liable to employ the applicant and pay him or her the salary to which he or she would have been entitled. As regards discrimination during the employment relationship, if an employee succeeds in a claim for equal pay, the employer must pay the employee the appropriate difference in pay. Finally, with reference to age discrimination when an employee is dismissed, the primary sanction is the invalidity of the dismissal. Consequently, the employer will be obliged to pay any outstanding wages to the employee from the time of his or her dismissal until the time of the judgment in the employee's favour.

Imprisonment of between 6 months and 3 years and a fine of between EUR 1,000 and EUR 5,000 may be imposed. In addition, Article 17 of the Law considers an infringement as a violation of Greek Labour Law and this is subject to a fine, imposed by the Work Inspectorate (Article 16 of Law 2639/1998) as an administrative penalty, ranging from EUR 500 to EUR 500,000.

A number of cases on age discrimination have been taken to the Greek Ombudsman, an independent authority, operating under Article 103 of the Constitution and Law 2477/1977. Its main activity is to research and investigate whether there have been infringements of human rights, in particular, discrimination relating to disability, sex, age or race and to illustrate the extent of general discriminatory practices.

## IRELAND

Individuals can enforce their rights with the Equality Tribunal, which is an independent and impartial body responsible for investigating and deciding discrimination claims.

Under the Equal Status Act 2000 (the '2000 Act'), compensation of up to EUR 6,350 may be awarded. In equal pay claims, an order for equal pay and arrears not exceeding a period of three years can be awarded. In other cases, an order for equal treatment and compensation of up to two years' pay - or EUR 12,700 in the case of a claimant who was not an employee - may be awarded. The Equality Tribunal may also order: re-instatement; re-engagement; and other specific courses of action.

## ITALY

Employment-related or similar claims for age discrimination may be brought before the Employment Tribunal. No ceiling has been imposed on compensation but the Court, in quantifying the level of damages, will consider whether the discrimination by the employer was in response to a previous court action brought by the employee, or an unfair reaction to a previous case to enforce compliance with the principle of equal opportunities. In cases of dismissal based on age discrimination the Court could order the employee's reinstatement and the payment of damages.

The Court may order the employer to: pay damages; cease the discriminatory behaviour; and develop a plan to remove the discriminatory practices. It may also publish the decision in a national newspaper.

## LATVIA

Employment-related or similar claims for age discrimination can be brought before the Courts. The employee concerned is entitled to demand cessation of the discriminatory activity; rectification of the consequences; and appropriate satisfaction (moral and/or financial). If an employee's reputation in the workplace is substantially harmed, he or she may also claim financial compensation for this.

An employer who has been found guilty of breach of the prohibition on discrimination may be fined by the State Labour Inspectorate in an amount of up to EUR 1,070.

## LUXEMBOURG

Employment-related age discrimination claims can be brought before the Labour Tribunal. However, note that in practice there have been no claims for discrimination on the grounds of age in Luxembourg.

The Labour Code does not provide specific compensation for cases of age discrimination. The employee concerned is entitled to ask the Labour Tribunal to declare void any discriminatory provision written, notably, in a contract, an individual or collective agreement or a company internal policy. The employee may also ask the Labour Tribunal for his or her dismissal to be declared void based on age discrimination or retaliation.

The Penal Code contains sanctions against employers who discriminate against employees on grounds of age. Sanctions range from eight days to two years' imprisonment and/or a penalty of between EUR 251 and 25,000 for: refusing to hire an applicant based on age; punishing or dismissing an employee based on age; or advertising a job containing a condition based on age. Any person inducing employers to discriminate against employees will also face the same penal sanctions.

## NETHERLANDS

Individuals can enforce their rights in court or before the Equal Treatment Commission.

If it is not unlikely that an applicant would have been offered a job had he not been discriminated against, he may claim damages for both material and emotional harm. Material damages may be equal to the salary relating to the period the employment would have lasted (in cases of contracts for a fixed period). Pursuant to European legislation, compensation for emotional harm can also be claimed, but in practice awards of compensation for emotional harm

are rare.

Article 11 of the Article 1 of the Equal Treatment in Employment (Age Discrimination) Act ('EETA', in Dutch: 'Wet Gelijke Behandeling op grond van leeftijd bij de arbeid') protects employees against termination by an employer who makes an unlawful distinction or where the employee claims he was discriminated against. Such reasons for dismissal are voidable. The employee must lodge a claim within six months of the day the employment terminated. Where the court finds that the employer did not meet the standard of a 'good employer' set out in the Civil Code, this results in higher severance payments.

## NORWAY

The Equality and Anti-discrimination Ombudsman; the Norwegian Equality Tribunal; or in the courts. The court can award compensation for financial loss and non-financial loss. There are no fixed amounts and the amount of the indemnity is decided by the court.

The Norwegian Equality Tribunal may enforce administratively binding rules in order to make sure discrimination ceases. The employer may also be liable to pay a fine, either as a penalty for non-compliance with an administrative order of the Equality Tribunal to cease the discriminatory practice, or a fine issued by the police. However, to our knowledge, no employer has yet been fined for age discrimination.

The first Supreme Court case on age discrimination, in February 2010, concerned the age limit for seamen, which is 62 years by law. A 63 year old seaman was dismissed. The age limit was set, because of the physically demanding nature of the work and the Supreme Court found it to be justified in this case.

## POLAND

There are no special courts or tribunals that deal exclusively with age discrimination cases. Individuals may enforce their rights in the Labour Courts.

Employees may claim full compensation (i.e. for actual loss and lost profits). The compensation cannot be lower than the statutory minimum wage (currently approximately EUR 340) but there is no maximum limit. Employees may also claim compensation for infringement of their personal rights (e.g. dignity).

The amount of compensation is determined by the Court in relation to the employee's moral suffering. Hitherto, judgments have granted compensation of rather insignificant value (as a general rule between the statutory minimum wage and EUR 1,000). If age discrimination results in infringement of an employee's personal rights, he or she may demand primarily: an apology; a specific payment to charity; and the cessation of the discriminatory treatment.

There are no direct criminal sanctions. However, in theory, discrimination may fall under the general criminal sanctions for malicious breach of employees' rights.

## PORTUGAL

Individuals can enforce their rights in the Employment Court. Damages may be awarded for financial and/or non-financial loss. There are no minimum or maximum amounts. Fines are imposed by the Authority for Labour Conditions (the 'ACT'), an administrative body under the Labour Ministry.

A breach of the legal provisions that prohibit discrimination is considered gross misconduct and may lead to the the Authority for Labour Conditions (the 'ACT') imposing fines varying between EUR 2,040.00 and EUR 61,200.00 on the employer. The above does not preclude a claimant from bringing a civil action on the basis of any infringements according to the general principles of law. In addition, any act towards an employee that constitutes discrimination or breaches the prohibition on discrimination is automatically void.

## RUSSIA

Claims for administrative offences can be brought before a district court. The latter may also detect violations in the course of inspections performed on its own initiative or at the request of an employee or employer. Claims of criminal

offences should be filed at the local police station for consideration by the district court. The employee can claim for harm caused to him or her (including moral damage) from the company. The amount of such damages will depend on the case.

Administrative liability applies both to company officials and to the company itself. Officials can be fined and disqualified from holding certain positions; and companies can be fined or required to suspend operations (up to 90 days). Though the Criminal Code does not expressly name discrimination on age grounds, theoretically, age discrimination could qualify as a criminal offence. Sanctions vary from fines to imprisonment for up to five years.

## SLOVAKIA

Individuals must enforce their rights in the courts. There are no employment tribunals or other specialist bodies that deal with discrimination cases in Slovakia. Individuals may seek an order that the person violating the principle of equal treatment must cease such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction (such satisfaction being provided in non-monetary form, e.g. by means of an apology).

Should the 'adequate' satisfaction in fact prove to be insufficient, especially where the violation of the principle of equal treatment has considerably impaired the dignity, social status and social functioning of the individual, the individual shall also have the right to monetary compensation for non-material damage. The amount of any compensation will be determined by the Court, taking into account the extent of the harm suffered and all underlying circumstances. In addition to compensation that can be claimed by the individual in court, the Work Inspectorate may impose a penalty of up to EUR 100,000 on the employer.

## SPAIN

Employees can enforce their rights related to age discrimination before the Labour Courts and also before the Labour Authorities. An employee who has been discriminated against may request compensation for harm suffered. The employee will need to prove the harm suffered and the Court is free to set the amount of compensation. Since compensation for breaches by the employer or dismissal is capped by law, the addition of a claim of discrimination may be a way of accessing a higher than usual level of compensation.

Given that there is no cap and the organisation would therefore need invest time and money in its defence, this type of claim is often used as a way of forcing an organisation to negotiate.

An employer breaches Regulation RD 5/2000 if it takes a decision resulting in age discrimination. Breach is punishable by fines of between EUR 6,251 and 187,515. By Article 17 of the Workers' Statute any discriminatory act, is void. An employee may bring a claim to have the act declared void and receive compensation.

## SWEDEN

Individuals who have been discriminated against may turn to the Equality Ombudsman (the 'DO'), a government agency which regulates compliance with equality legislation. The DO often resolves discrimination cases by mutual agreements. Otherwise, cases involving age discrimination are determined by either the District Court and/or the Labour Court.

An employer that discriminates unlawfully may be held liable for damages. This may involve both financial compensation (e.g. for loss of pay) and general damages for 'demeaning treatment' according to the severity of the discrimination (as of January 2009 there is no maximum limit for the general damages). The courts may rule that a discriminatory agreement is invalid.

## SWITZERLAND

Employment-related claims are brought before the labour courts or, if the canton or district where the claim is brought does not have a labour court, the civil courts. If the termination is considered abusive by a court, the employee may claim up to six months' salary. Note that the employment contract is terminated even if the dismissal was abusive. There are no other remedies or penalties.

## TURKEY

Employment-related claims are heard in the Labour Courts. Article 5 of the Labour Law (the 'Law') stipulates that damages for all discrimination cases may amount to four times the monthly salary of the employee, plus any rights that the employee has been deprived of, such as additional payments (e.g. bonuses). There are no other remedies or penalties.

## UNITED KINGDOM

Most employment-related or similar claims for age discrimination can be brought before the Employment Tribunal. Compensation can be awarded for: (1) financial losses (e.g. loss of earnings, bonus, or pension benefits); and (2) 'injury to feelings' based on the severity of the discrimination (ranging from £600 to £30,000). An Employment Tribunal can make a declaration of the parties' rights; or a recommendation that the employer take specific action.